United States Court of Appeals for the Second Circuit



APPENDIX

No. 77-1043

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA.

Plaintiff-Appellee,

-against-

MARX R. JACKSON

Defendant-Appellant

On Appeal From the United States
District Court
For the Southern District of New York

APPENDIX FOR APPELLANT MARX JACKSON

JOHN A. SHORTER, JR. Attorney for Appellant MARX R. JACKSON 508 Fifth Street N.W. Washington, D.C. 20001 PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.

- V -

INDICTION

76 Cr.

MAYHOLD ANDERSÖN, a/k/a "Slim,"
JOALS JONES,

ACLUMA FRANCLIM.
ROBERT MOORE, a/k/a "Bobby,"

VIPGIL MILTE, EDDIARD JOHNSON,

MARCH JACKSON, a/k/a 'Moxie,"
JOH RING and

EDITH RIVERS,

Defendants.

COURT OFF

The Grand Jury charges:

- and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RAYFOND ANDERSON, a/k/a "Slim,", JOANS 30-MES, ARLETHA FRANKLIN, ROBERT MOORE, a/k/a "Bobby," VIRGIL VEHTE, BERNARD JOHNSON, MARK JACKSON, a/k/a "Moxie," JOE HING, and IDITH RIVERS, the defendants, together with Earl Rivers and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections \$12, 541(a)(1) and 841(b)(1)(A) of Title 21, United States Code.
- 2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly could distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact account thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

THE DYFFYDAMES

The Source of Supply in New York

3. Defendant RAYMOND ANDERSON, a/k/a "Slim," was a supplier of heroin doing business in New York City.

The Courters

4. Earl Rivers and the defendants EDITH RIVERS,
JOANN JONES, and ARLETHA FRANKLIN were the couriers who
carried packages of heroin from RAYMOND ANDERSON, a/k/a
"Slim," to the buyers in other cities in the United States.

me Dealers

- 5. Defendant ROBERT MOORE, a/k/a "Robby," was a bulk purchaser of heroin in Williamsport, Pennsylvania.
- 6. Defendants VIRGIL WHITE and BERNARD JOHNSON were bulk purchasers of heroin in Atlanta, Georgie.
- 7. Defendants MARK JACKSON, s/k/a "Moxie," and JOE KING were bulk purchasers of heroin in Washington, D.C.

OVERY ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

The descriptions herein relate to the period of the Indictment.

FTD:ee M-1547

- 1) In 1972, Earl Rivers and the defendant RAYMOND ANDERSON, a/k/a 'Slim," had a conversation.
- 2) In or about October, 1972, Earl Rivers purchased approximately one quarter kilogram of heroin from the defendant RAYMOND ANDERSON, a/k/a "Slim."
- 3) In November, 1973, Karl Rivers and the defendant JOANN JONES purchased approximately one eighth kilogram of heroin from the defendant RAYMOND ANDERSON, a/k/a 'Slim."
- 4) In or about November, 1973, Earl Rivers transferred one eighth kilogram of heroin to defendants ARLHYMA FRANKLIN and ROBERT MOORE, a/k/a "Bobby."
- 2) In or about December, 1973, the defendants
 EDITH RIVERS and ARLETHA FRANKLIN travelled to New York City
 together with Del Zora Graves and purchased approximately
 one eighth kilogram of heroin from the defendant RAYMOND
 ANDERSON, a/k/a "Slim."
- 6) In or about December, 1973, the defendant RAYMOND ANDERSON, a/k/a 'Slim,' in New York City spoke by telephone with Earl Rivers in Williamsport, Pennsylvania.
- 7) In or about December, 1973, the defendant RAYMOND ANDERSON, a/k/s 'Sliw," distributed approximately one eighth kilogram of heroin to the defendant JOE KING.
- 8) On or about January 17, 1974, Earl Rivers and the defendant RAYMOND AMDERSON, a/k/a "Slim," drove from New York City to Washington, D.C.
- 9) On or about January 18, 1974, Harl Rivers and the defendants MARX JACKSON, a/k/a "Moxie," and RATHORN ANDERSON, a/k/a "Slim," had a conversation.

- 10) In or about January, 1974, Earl Rivers and the defendant EDITH RIVERS went to Atlanta, Georgia, with a quantity of heroin.
- 11) In or about January, 1974, the defendants VIRGIL WHITE and BERNARD JOHNSON purchased a quantity of heroin in Atlanta, Coorgia.
- 12) In February, 1974, the defendants VIRGIL WHITE and BERNARD JOHNSON went to Williamsport, Pennsylvania.
- 13) In February, 1974, the defendants VIRGIL WHITE and BERMARD JOHNSON purchased approximately one eighth kilogram of heroin from the defendant RAYMOND ANDURSON, a/k/a "Slim."
- 14) In or about February, 1974 the defendant MARK JACKSON, a/k/a "Moxie." purchased approximately one eighth kilogram of heroin and one eighth kilogram of cocaine.
- 15) In or about March, 1974, RAYMOND ANDERSON, a/k/a "Slim," sold approximately one quarter kilogram of heroin.
- 16) In or about April, 1974, the defendant RAYMOND ANDERSON, a/k/a "Slim" distributed to the defendant ARLETHA FRANKLIN approximately two end one-half ownces of heroin.

(Title 21, United States Code, Section 846)

COUNT TWO

The Grand Jury further charges:

From on or about the lat day of October, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RAYNORD ANDERSON, a/k/a "Slim," the defendant, unlowfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violata Title 21, United States Cods, Sections 841(a)(1) and 341(b)(1)(A) as alleged in Counts One and Three through Seven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant RAYMOND ANDERSON, a/k/a "Slim," occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant RAYMOND ANDERSON, z/k/a "Slim," obtained substantial income and rescurces.

(Title 21, United States Code, Section 848).

COUNT TERRE

The Crand Jury further charges:

In or about the month of Docember, 1973, in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," ARLETHA FRANKLIN, and EDITH GRAVES, the defendance, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21, United States Code, Section 812 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

In or about the month of December, 1973, in the Southern District of New York, RAYMOND ANDERSON s/k/a "Slim," and JOE KING, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth bilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIVE

The Grand Jury further charges:

In or about the month of February, 1974, in the Southern District of New York, RAYMOND AMDERSON, a/k/a "Slim," VIRGIL WHITE and BERNARD JOHNSON, the defendance, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21. United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIX

The Grand Jury further charges:

In or about the month of February, 1974, in the Southern District of New York, RAYMOND ANDERSON and MARK JACKSON, a/k/a "Moxie," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 341(b)(1)(A).)

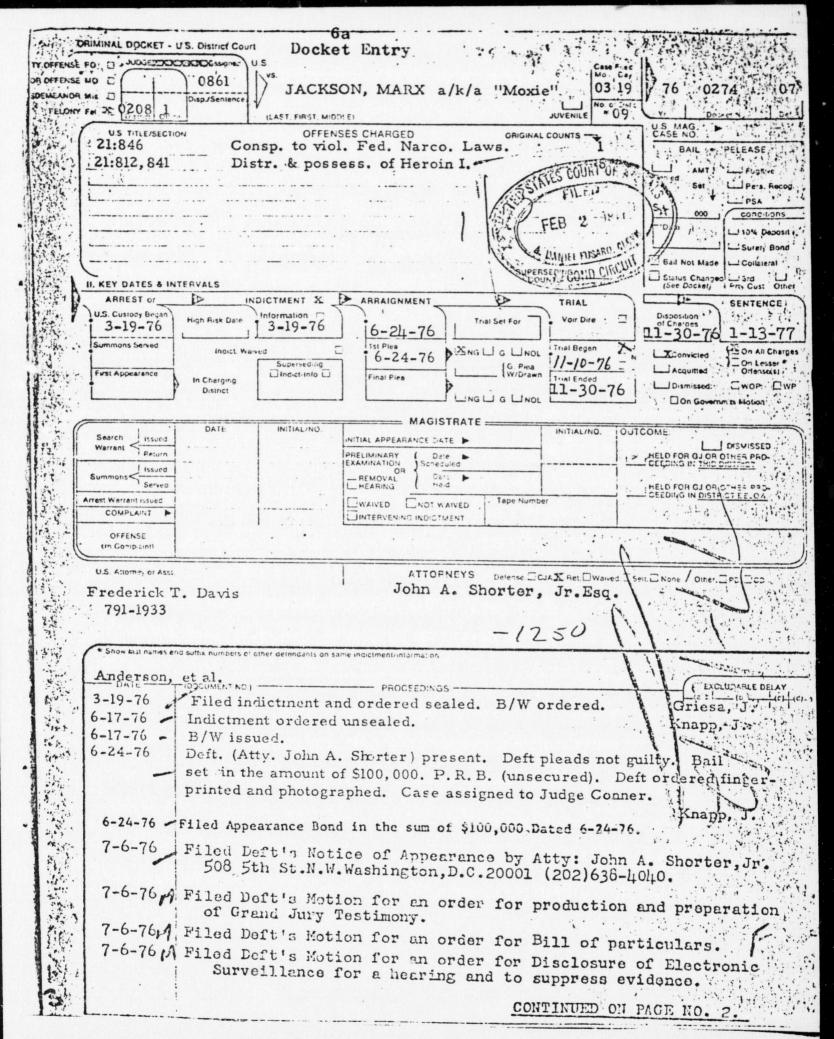
COUNT SEVEN

In or about the month of April, 1974 in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," and ARLETHA FRANKLIN, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two and one-half ounces of heroin.

(Title 21, United States Code, Sections 812, E41(a)(1) and 841(b)(1)(A).)

PORTEMAN

ROBERT B. PISKE, JR. United States Attorney



DATE	IV. PROCEEDINGS (continued)	PAGE TWO	r.V	EXCLUDABLE	DELA
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10-6-76 67				1	
10-6-76	Filed memorandum of the Govt.in opposition to	bill of particula	rs		
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JACKSON, MARX

a/k/a"Moxie"

	USA	CONNER J PAGE XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
DATE	NR.	PROCEEDINGS
1-13-77		Filed Judgment (Atty. John A. Shorter, present) The defendant is committed for imprisonment, pursuant to Title 18, U.S. Code, Section 4208(a) (2), for a period of FIVE (5) YEARS, on each of Counts 1 and 6, to run concurrently with each other, and with sentence imposed by United States District Court of the Eastern District of Virginia, for unauthorized possession of a motor vehicle. Defendant is placed on Special Parole for a term of THREE (3) YEARS, to commence upon the expiration of his confinement, pursuant to the provisions of Title 21, U.S. Code, Section 841. Defendant shall post a \$25,000 Surety Bond, pending appeal, by 12 P.M. on January 17, 1977. If bail is not posted, defendant shall surrender to the United States Marshal in Room 506 at 12P.M. on January 17, 1977. CONNER, J Entered on-1-14-77. Issued commitment and copies.
1-13-77		Filed notice of appeal from judgment dtd. 1-13-77 copy given AUSA and mailed to defts counsel.

FTD: aw 70-0145 10-37

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

m(a cat (t aa)

:

KAYMOND ANDERSON, et al.

-v-

: 76 cr. 274 (1.00)

BILL OF PARTICULAR.

Defendants .

Pursuant to the instructions given a

Pursuant to the instructions given and agreements reached at the pre-trial conference held on October 22, 1976, the Government files the following bill of particulars.

A. Overt Acts: The time, date and place of the Overt Acts are as follows. When no time or precise date is stated, such is not known in any greater detail than furnished.

- 1. At Allenwood and Lewisburg Federal prisons at various dates up to September 20, 1972.
- 2. No precise date; at a school in vicinity of Lenox Avenue and 140th Street.
- 3. Date and time not known but near Thanksgiving;
 in or near restaurant variously known as "Andrews Restaurant"
 and "Anderson's hestaurant" at 2222 Lighth Avenue, (hereinafter:
 "the restaurant.")
- 4. Date and time not known; at "the restaurant" and enroute between "the restaurant" and Williamsport. Pennyslvania.
 - 5. Date and time not known; at "the restaurant."
 - 6. Date and time not known; toward end of December.
 - 7. Same date as #6; in or near "the restaurant."
 - 8. Self explanatory in indictment. They drove from "the restaurant" to the Aspen Motor Inn, 6711 Georgia Avenue, Washington, D. C.
 - y. At Hampton's Restaurent, near U Street on 9th Street in Washington, D.C.
 - 10. On or about January 15, 1974, at various places

in Atlanta, Georgia, including homes of Virgil White and Bernard Johnson.

- 11. Same date and places as in #10.
- 12. February 21, 1974, at various places including the Holiday Inn at Williamsport.
- 13. On approximately February 22, 1974, at "the restaurant."
- 14. At home of mother of defendant Jackson, near New Hampshire blvd, Washington, D. C.
 - 15. Date and time not known; at "the restaurant."
 - 16. Date and time not known; at "the restaurant."
- B. The acts alleged in the substantive counts took place as follows, subject to the caveats:
 - and a route back to billiansport,

 Pennsylvania.
 - 5) On approximately February 21, 1974, at "the restaurant."
 - 6) At date and time set forth in Overt Act 14.
 - 7) At "the restaurant", date and time not known in more detail.
- c. The co-conspirators other than that listed in the indictment are Ross Newitt and John Green.
- D. No pre-arrest photographs at any defendants, nor any tape-recordings of any defendant, will be used at trial.
- E. The Government will contend that the defendant white met Earl Rivers, Edith Rivers, Bernard Johnson; John Green, Robert Moore; and Marx Jackson.

F. The first act committed by Virgil White in furtherance of the conspiracy, known to the Government, occurred on approximately January 3, 1974.

Dated: New York, New York

October 20, 1970

ROBERT B. FISKE, JR.

United States Attorney for the Southern District of New York Attorney for United States of America

By:

PREDERICK T. DAVIS

Assistant United States Attorney
Office & Post Office Address:
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New York, New York 10007
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TO:

MAYROSE FRIEDMAN, ESQ. 501 Madison Avenue New York, New York 10022

JENOME LANDAU, ESQ. 401 Broadway New York, New York

JOHN SHORTER, LEQ. / Mitchell, Shorter & Gartrell 508 Fifth Street Washington, D. C. 20001 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

: 76 Cr. 274 (WCC)

RAYMOND ANDERSON, et al.,

Defendants.

MOTION TO DISMISS COUNT SIX OF THE INDICTMENT

Comes now the Defendant Marx Jackson, by counsel, and moves this Honorable Court, pursuant to Rule 12(b)(2), Federal Rules of Criminal Procedure, to dismiss Count Six of the indictment herein on the grounds that venue for the offense charged therein is not laid in this Court, as required by Rule 18. In further support of this motion, the Defendant relies upon the memorandum attached hereto.

Respectfully subm

JOHN A. SHORTER, JR. Attorney for Defendant 508 Fifth Street N.W. Washington, D.C. 20001 (202-638-4040)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Motion and attached Memorandum were mailed, postage prepaid, to Frederick T. Davis, Esquire, Assistant United States Attorney, One St. Andrew Plaza New York, New York 10007 this day of November, 1976.

JOHN A. SHORTER, JR.

LAW OFFICES
MITCHELL, SHORTER
& GARTRELL
SOU FIFTH STREET, N.W.
WASHINGTON, D.C. 20001

(202) 536-4040

2 United States of America

76 Cr. 0274

Raymond Anderson, et al.

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New York, New York

November 18, 1976 2:00 P.M. Afternoon Session

(Trial Resumed

(In open court; jury not present)

MR. DAVIS: Your Honor, there is another matter.

The next witness the government intends to call is one Samson Williams about whom there has already been testimony. When Mr. Williams appeared before the grand jury in this matter he claimed his Fifth Amendment privilege and was immediately granted immunity pursuant to an order signed by another district court judge.

My understanding is that if he pleaded the Fifth Amendment in this court he will have to be conferred immunity again by your Honor ans since there is a good

1 mbbr 944 chance he will do this since he's done it before it's my 2 3 understanding of law in this district that he should first be brought out out of the presence of the jury, 5 asked a question or two by myself, if hepleads the Fifth 6 Amendment then I will ask your Honor pursuant to the 7 statute to confer immunity upon him. 8 THE COURT: Do you have the letter from the 9 Justice Department requesting that immunity be granted? 10 MR . DAVIS: I do, your Honor. Can I ask that 11 that be--12 THE COURT: We will do that. 13 MR.DAVIS: I have the original. Can I ask that 14 a copy that I happen to have be made a court exhibit? 15 (Court Exhibit 3 was marked.) 16 MR. DAVIS: Let me just say for the record, 17 your Honor, that it is the judgment of the United States 18 Attorney that his testimony under immunity if necessary 19 wouldbe in the best interests of justice in this case. 20 THE COURT: All right. 21 You want to bring him out, please. 22 23

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1	mbbr Williams-direct 945
2	SAMPSON WILLIAMS, called as a witness
3	by the government, having been first duly sworn,
4	testified as follows:
5	DIRECT EXAMINATION
6	BY MR. DAVIS:
7	Q Mr. Williams, you and I have spoken before,
8	is that not right?
9	A Yes, sir.
10	Q Pardon me?
11	A Yes, sir.
12	Q And I am going to ask you a few questions.
13	Do you know a person named Earl?
14	A Yes, I do.
15	MR.DAVIS: Can I cut through this, your Honor.
16	Is it your intention to plead the Fifth Amendment if I ask
17	you questions in front of a jury?
18	A Am I
19	Q Is it your intention to refuse to answer
20	questions in this court on the grounds that your answers

A Yes, sir.

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Q That is your intektion as to any question
I askyou?

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A Yes, sir.

might tend to incriminate you if you did answer?

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MR. DAVIS: I would ask that he be conferred immunity pursuant to Section 6002 of the Criminal Code.

Court, under the provisions of the statute that the Assistant U.S. Attorney has just referred to, 18 U.S. Code Section 6003, or Sections 6002 and 3, hereby grants you immunity from prosecution based upon any information derived directly or indirectly from your testimony in this case. In other words, nothing you here in this court can be used either as the basis of a prosecution of you under some criminal statute or as a basis of uncovering other evidence which will be used against you in a criminal prosecution.

Now, the effect of this is that you no longer have a privilege of testifying on the ground of self-incrimination, and the Court is directing you to answer any proper questions with respect to whatyou did in connection with the matters that are involved here. You can't be prosecuted because of furnishing that information.

In other words, you are immune to any such prosecution.

Do you understand?

THE WITNESS: Yes, sir.

MR.DAVIS: One very brief matter before the jury comes in, your Honor. As an issue under Brady v. Maryland

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THE COURT: What Mr. Davis is saying there is that in any criminal prosecution that may be brought against you in any matter now pending, on your request he will write a letter or will cause a letter to be written by the United States Attorney to the sentencing court calling

to the attention of the sentencing court the fact that you have cooperated with the U.S. Attorney's office here, so that that might be taken into consideration by the ...rt in determining what kind of sentence you will get.

THE WITNESS: You are saying that I am under sentencing here?

The Court: No, no, no, absolutely not.

This is in any other criminal matter, that might be -
that you might be involved in, that he would be willing,

if you want him to do so, to write or cause to be written

a letter to that court, whoever it is, saying that

Mr. Williams cooperated here and the Court then may

take that into consideration in determining your

sentence.

MR. CURLEY: Two matters, your Honor.

First, do I understand that to be cooperation under a grant of immunity or in other words, we are talking about something that is going to take place now or some opportunity he had in the past that he didn't avail himself of.

THE COURT: I don't know what other matters the witness might be involved in so I don't know.

Maybe Mr. Davis does.

MR. CURLEY: I am talking about this case.

Is it the government's position that they will write a letter even if he insists on being granted immunity and the cooperation will be testifying after being granted immunith, because if so I just question whether this grant of immunity is a pretext of some kind.

(Continued on next page.)

11-	18-76		
		1	mmds 1 Williams - direct 950
A	nderson	2	THE COURT: No, you misunderstand. This is
	Tk2	3	not a prosecution based upon the evidence he is going to
_		4	give here either directly or indirectly. I just granted
•		5	him immunity, so he can't be prosecuted on that.
•	рm	6	MR. CURLEY: About a letter to the Parole
		7	Board, does the government consider it cooperation, even
,		8	though he has declined to testify in the past without a
		9	grant of immunity?
		10	
		11	THE COURT: I think it is obvious. Otherwise,
		12	Mr. Davis' statement would have no meaning whatever.
		13	MR. DAVIS: My intentions are irrelevant. What
			I told Mr. Williams was that any cooperation he gave would
		14	be brought to the attention of the Parole Board. I made
		15	that statement before he appeared in the grand jury and
		16	was immunized.
		17	THE COURT: I didn't realize you were talking
		18	about the Parole Board.
		19	MR. CURLEY: It is the government's position
•		20	he was given a chance to cooperate and didn't do so and
		21	they had to resort to a grant of immunity. Is their posi-
		22	
-		23	tion notwithstanding their having to resort to a grant of
		24	immunity that they are going to advise the Parole Board
		25	that he may or may not be considered a cooperating witness?
		20	THE COURT: Do you want to answer that?

MR. DAVIS: The purpose of my making these statements under Brady vs. Maryland is for possible impeachment value. My actual intentions are irrelevant. It is only what has been told to the witness need be divulged.

THE COURT: I misunderstood. I thought you were saying, in effect, you were still willing to do that and that is why I explained it to the witness on that basis. I have already told him that if he wanted you to write the letter, you would write it. If you are saying you don't know whether you would write it or not --

MR. DAVIS: I will be glad to back-up whatever you said and write a letter.

THE COURT: If you want to change it, now is the time to change it.

MR. DAVIS: My only point is the only thing
I told him previously was that I would write a letter for
him. I never backed away from that.

THE COURT The answer to your question is -MR. CURLEY: -- whether the writing of the
letter is predicated upon his not requesting and receiving
immunity.

THE COURT: No, because he already promised the letter before there was any refusal to testify and

THE WITNESS: Well --

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MR. SHORTER: Listening to what has been transpiring, it seems to me that perhaps we should know about Mr. Williams in a little more detail, because I

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MR. CURLEY: Yes. I would like to have it outside the presence of a potential witness.

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THE COURT: Any objection to that, Mr.Davis?

MR. DAVIS: My only objection is the 3500

before the Court and perhaps through the Court, your Honor,

is whether or not Mr. Davis can represent that Mr. Williams is going to give testimony in this case. Now, that has nothing to do with what Mr. Williams might have done in the past, your Honor, but, by the same token, if Mr. Williams proposes not to testify in this case, then it is going to put the defense in a very difficult position, your Honor, because we will have a spectacle occurring before the jury, or, at least, taking place before the jury that is going to consist of questions which will not be answered.

THE COURT: Well, didn't you hear me ask

Mr. Williams whether he was going to invoke his privilege

of self-incrimination, and my understanding is that he

said no?

MR. SHORTER: People refuse to testify, your Honor, even in the face of a grant of immunity, and even, your Honor, for reasons not connected with Fifth Amendment grounds. I have had many a case where the witness just comes to the stand and says, "Well, I am not going to give any testimony; Iam not going to answer any questions. I don't care about any grant of immunity."

THE COURT: Would it satisfy you if we bring

Mr. Williams out and ask him if he is willing to testify

and tell what he does know and testify and answer questions?

MR. SHORTER: That may be one of the ways to

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deal with the problem.

MR. CURLEY: Didn't he say he knows nothing about this?

THE COURT: Yes, but apparently Mr. Davis has good reason to believe otherwise. And if the witness is willing to tell what he knows, what additional precaution can the Court take?

MR. CURLEY: I don't know what the government's point is at this juncture. If the witness says, and I think he was under oath when he answered your Honor's question, that he doesn't know anything about this, are they trying to call him as a hostile witness? Are they trying to get in grand jury testimony? Do they expect him to say something? He told your Honor he doesn't know anything about it.

THE COURT: He doesn't know what questions he is going to be asked when he says he doesn't know anything about it. He can't anticipate all the questions that he is going to be asked.

MR. CURLEY: He knows he is here for one purpose, to testify concerning the case against Raymond Anderson, et al.

THE COURT: If he does refuse to testify on the basis that he does not know anything about the matters

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testify.

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THE COURT: I asked him that question. MR. CURLEY: You asked him whether he was

expose himself to contempt proceedings rather than to

1	minds 9 Williams-direct 958
2	going to take the Fifth.
3	THE COURT: And he said no.
4	MR. CURLEY: Then he was asked if he knew
5	anything about this and said no.
6	THE COURT: No, he volunteered that. But if
7	his testimony is that he does not know anything about it,
8	that won't expose him to contempt. It might expose him to
9	charges of perjury, but it would not expose him to contempt.
10	MR. CURLEY: If he testified before the grand
11	jury and then he testifies here that he does not know any-
12	thing about it, I think the overlap between that type of
13	answer as being perjurious and contemptuous is very close,
14	your Honor.
15	THE COURT: I think the overriding charge
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	would be either perjury or obstruction of justice under
17	1621 or 1623, and I would be content to let the United States
18	Attorney take over.
19	MR. CURLEY: Does your Honor want to draw this
20	out?
21	THE COURT: I will bring him out and ask him
22	if he intends to tell what he knows.
23	SAMPSON WILLIAMS, resumed.
24	THE COURT: Mr. Williams, a moment ago you

said you didn't know anything about these matters, and that

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caused some of the defense attorneys to wonder whether you were going to refuse to testify or whether you were going to tell what you did know. To the extent that you know it, are you willing to tell what you know in view of the Court's having granted you immunity from any prosecution because of your testimony?

THE WITNESS: I say what I said before, I don't know anything about the matter.

THE COURT: Are you willing to say what you do know?

THE WITNESS: Well, I don't know anything.

THE COURT: Well, you have been interviewed

by Drug Enforcement agents and by the Assistant United

States Attorney and you did give testimony before the grand

jury and they happen to think or they obviously think that

you do know something that would be relevant to the case

and they want to ask you questions. All we want to find out,

in advance, are you willing to tell what you know?

THE WITNESS: Judge, you got me a little confused. You are saying, telling me, want me to tell what I know, and I am saying I don't know anything about this case.

THE COURT: Of course, you don't know what questions you will be asked.

really, was whether --

THE WITNESS: I know what Mr.Davis has tried to believe on me of what some informant has said.

THE COURT: Mr. Davis, do you want to ask him a couple of questions that you intended to ask?

MR. DAVIS: I have already asked one and he answered one. How far down the road do you want me to go?

THE COURT: The only question you asked,

MR. DAVIS: I asked him if he knew Earl and he said he did. I do not believe that there is any requirement that I go through all the questions I am going to ask him.

THE COURT: I don't say that you go through all of them, but if you would ask him one or two questions that you would consider relevant to the case to see whether or not he has the information that you think he has.

MR. CURLEY: Excuse me. Since the witness is present, I submit a note from defense table through Mr. Davis and the court clerk.

MR. DAVIS: I read the note on the way and I suggest that it is irrelevant at this point.

THE COURT: I believe it is irrelevant because I have already granted him immunity.

MR. CURLEY: I.agree with that, your Honor.

1	mmds 12 Williams - direct 961
2	I think we are now talking about civil and/or criminal
3	contempt proceedings.
4	THE COURT: We are talking about
5	MR. DAVIS: I don't want to have suggestions
6	made to this witness.
7	THE COURT: Yes.
8	MR. CURLEY: I think the law is clear. I
9	don't have any objection to his being excluded.
10	THE COURT: If any proceedings are initiated,
11	that would be the time to worry about the person you refer
12	to.
13	MR. CURLEY: I would respectfully disagree,
14	your Honor.
15	THE COURT: All right, your disagreement is
16	noted.
17	You were about to ask him a question
18	DIRECT EXAMINATION CONTINUED
19	BY MR. DAVIS:
20	Q I asked you earlier whether you knew a person
21	named Earl?
22	A Yes.
23	Q Is his full name Earl Rivers?
24	A Not that I know of.
25	Q You know him as Earl?

1	munds 13	Williams - direct 962
2	A	That is all.
3	Q	Did you meet him in the District of Columbia?
4	A	I did.
5	Q	Did you meet him on several occasions in the
6	District	of Columbia?
7	A	Well, I would say that I was in his presence
8	where we	were possibly at what you call a hangout. We
9	would be	in the same hangouts.
10	Q	Did he ever tell you that he was related to
11	a person	named Joe King?
12	A	I don't remember.
13	Q	Do you know a person by the name of Joe King?
14	А	Yes, I do.
15	•	MR. DAVIS: What can I say?
16		THE COURT: Up to now there is nothing that
17	is really	probative of any of the charges made here.
18		MR. DAVIS: Your Honor wants
19		THE COURT: If you get to one relevant question.
20	Q	Do you know a person named Moxie?
21	A	Yes.
22	Q	Is he a friend of yours?
23	A	Well, you can say we are associates.
24	0	Would it be fair to say you have been in contact
25	with him	relatively frequently?

1	mmds 14 Williams - direct 963
2	A Yes, I would say so.
3	Q Now, did you ever have a conversation with
4	Earl Rivers in which he indicated to you that he would fix
5	you up with his heroin source in New York City?
6	A Not that I remember.
7	MR. DAVIS: Now, your Honor, could this witness
8	be excused, because we are getting to a legal argument that
9	I would like to make.
10	THE COURT: All right.
11	(Witness excused)
12	MR. CURLEY: Can we have our note marked as
13	a Court exhibit?
14	THE COURT: Yes, you may.
15	MR. DAVIS: With respect to the attorney business
16	I have asked Mr. Williams a number of times if he wants an
17	attorney this is all February and March, during the grand
18	jury proceedings I specifically asked him if he wanted
19	an attorney with respect to immunity. It appears from
20	what Mr. Williams has said that he is going to contradict
21	what he earlier said under oath in the grand jury in the
22	sense that he specifically said in the grand jury that he
23	had a conversation with Earl about getting heroin.
24	Now, the law is clear in this Circuit. There

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are two things that are clear in this Circuit, first, that

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2 if a person is impeached with his prior statement under oath 3 in a grand jury, that that evidence comes in as affirmative 4 proof. That is clear from the Federal Rules of Evidence and 5 it is clear from the decisions of this court and of the 6 Second Circuit. It is also clear that the government has 7 the right to expect that someone who testifies in the grand 8 jury to one point will testify that way again, and I point 9 to the Giordano case, which is in Volume 521 F.2nd. In that 10 case a witness for the government testified before the 11 grand jury, was called as a witness on trial and recanted, 12 said, "What I said in the grand jury is all wrong." 13 14

There was a mistrial in the case, and then the case was tried again. The defense raised the objection that, "Wait a minute, the government knows this person is going to say something that will not help, therefore, they can't call him."

The Second Circuit upheld the contention that if a person testifies in the grand jury, the government can call him and expect he will testify the same way again.

THE COURT: Even though he refused to do so once?

MR. DAVIS: Yes.

THE COURT: I am going to permit it. I think under the new rules you can impeach your own witness, even

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if you know in advance that he is going to refuse to testify, if he has, in fact, testified before the grand jury in such a way as to incriminate the defendants, that evidence becomes admissible. Obviously, you could not use it without calling him as a witness and giving him a chance to explain or to say otherwise. But once you have called him, then you can use the grand jury testimony.

MR. SHORTER: Yes, your Honor. I have to respectfully object to this entire proceeding, particularly, your Honor, in using the witness as a vehicle to introduce his prior statement under oath as primary evidence in this case against any of teh defendants here, and particularly against Mr. Jackson. I don't think, your Honor, that it is proper or that it is right for the government to call a witness and be forewarned that the witness is not going to give any direct evidence in the case, but then refer the witness to his grand jury testimony.

We have to remember, your Honor, that what took place in the grand jury, especially in this case, is Mr. Davis asking leading questions, absolutely leading questions of the witness, having the witness affirm the question with a yes answer. They are really loaded questions.

jury?

If your Honor will look at the transcript, particularly the testimony of Mr. Williams, the government loads up a question --

THE COURT: Your objection to that is a little untimely. If there is an objection as to the form of the question, we will correct it at the time. If there is an objection as to form, that objection is waived.

MR. SHORTER: I was not in the grand jury, your Honor.

THE COURT: Oh, you're talking about the grand

MR. SHORTER: Yes. You see, what Mr.Davis proposes to do is to take this recalcitrant witness who sits here and use him as a conduit of what was presented before the grand jury and have the jury receive that as affirmative evidence.

I make an objection on two grounds: First,

I don't think it is proper for the government to proceed

in this way, take a man to the grand jury who does not have

a lawyer, your Honor; hit him with some grant of immunity,

and then proceed by asking him very loaded, leading questions

and have the man affirm the questions.

THE COURT: I understand your point. On request I will instruct the jury that they may consider in

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determining the credibility of the testimony the fact that it was given in response to leading questions, which, incidentally, is permissible in the grand jury, but would not be permissible here.

MR. SHORTER: That is what he is going to present.

I don't believe that is a ground for excluding it altogether, but on request I would instruct the jury that they may take into account in determining the weight to be given that evidence that it was given in response to leading questions, if that is a fact. I have, of course, not heard the testimony yet.

(Continued on next page)

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MR. SHORTER: Well, your Honor, a lot of damage is going to be done to the defendant by virtue of what's going to take place before the jury. For one thing, your Honor, we are going to have a witness who is going to, as far as I can see, be somewhat recalcitrant. Mr. Davis is then going to pick up the grand jury transcript and ask him questions based on the transcript to which I am certain from what I have heard here right now the witness is not going to affirm.

Then Mr. Davis is going to read the question.

Then he is going to ask your Honor to tell the jury that that represents substantive evidence, primary evidence in this case case against the defendant, and I object to the whole proceeding, your Honor.

I object to it first off because some of the questions that were asked before the grand jury I think were improper, they are ambiguous, your Honor. If the witness refused to answer I can't cross examine the grand jury transcript. I can't, because of the witness' reluctance to answer direct questions about what he testified before the grand jury, be prepared --

THE COURT: You do have the opportunity to ask questions of the witness so that he can explain his testimony. That's the meaning of Rule 613-B which says

that his prior testimony or any prior inconsistent

statement is admissible if the witness is given a chance

to explain it.

MR. SHORTER: But the witness is going to sit there mate, your Honor.

THE JURT: Well, I am sorry if he does that but I can't help it. He will have the opportunity to explain it. If he doesn't avail himself of that opportunity, then there is nothing I can deabout it.

I don't believe I can properly prevent

Mr. Davis from asking him questions on the same subjects

that were covered in his grand jury testimony, and if he

says he doesn't know, using the grand jury testimony,

to impeach him, and using the grand jury testimony as

affirmative evidence.

MR SHORTER: I just want to read this rule, your Honor.

THE COURT: All right.

MR. CURLEY: Your Honor, while Mr. Shorter is reading that, I would like to make an observation!

One, as I understood Mr. Davis's interpretation of Jordano, I think it might be that the government is able to claim surprise in front of the jury notwithstanding the fact of the reasons for the initial mistrial.

I think the record in this case at this juncture before the witness testifies before the jury clearly indicates that the government has been put on notice that the witness is not going to testify as they had apparently anticipated, but furthermore, I just would invite comments whether the government in preparing this case for trial was unaware, between the grand jury and answer in February and the trial and answer in November, that Mr. Williams was going to take this posture, which may lead to an element of surprise.

It seems to me that in preparing their witnesses for trial some time in the immediate past, including the fact that this case was adjourned from an earlier date, the government shouldhave been well aware that notwithstanding the grant of immunity before the grand jury and proposed trial jury, that this witness was in fact an uncooperative witness.

THE COURT: Well, I don't know whether that would be Brady material. I guess it would be. It might even be 3500 material, that is, the knowledge that a man is going to refuse to say something but you are getting the information now before the witness goes on the stand.

Did you know in advance, Mr. Davis, whether the

witness was going to refuse the testimony.

MR.DAVIS: Let me make a complete record on this, your Honor. First on the legal point the reason I mentioned the Jordano case is that did away with the surprise requirement. There the government explicitly knew that the person not only would but already had recanted the grand jury testimony, and the Court of Appeals nonetheless upheld the use of the grand jury testimony as affirmative proof.

I would also point out that the Federal Rules of Evidence nowhere mention the surprise requirement.

As to the facts, your Honor, Mr. Peacher who is sitting here can correct me if I am wrong, but Mr. Williams never refused during the grand jury period, in other words, during February or whatever, to answer any questions.

I never saw him again until approximately what, two weeks ago — roughly two weeks ago when I had a very brief conversation with him in my office with Mr. Peacher present, and he never said that he would refuse to answer any questions. He did say that his recollection was a little hazier now. Is that right, Mr. Peacher?

MR. PEACHER: Yes.

THE COURT: All right. I might say, since

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you are studying Rule 613(b) that that really applies to extrinsic evidence of a prior statement which is not nearly as strong as the prior statements taken under oath, and recorded in haec verba by a court reporter. So what is said in Rule 613(b) is applicable with even greater force to prior grand jury testimony.

All right, I suggest that unless somebody else wants to comment further we bring the wtiness out and bring the jury out and proceed.

MR.LANDAU: Judge, I would just like to join in my co-defendant's motions, and I'd like to move for a severance at this time of Virgil White's case from the case of Mr. Marx Jackson because it is my brief that what is going to occur now with reference to this witness will so greatly prejudice the case that it's got to spill over against Virgil White.

THE COURT: I am going to deny that motion.

MS.FRIEDMAN: Your Honor, I am going to

make a similar motion, a motion similar to Mr. Laudau's.

THE COURT: All right, same ruling.

I assume that you have weighed the risks against the advantages, Mr. Davis and you think the advantages to the government justify whatever risks are involved?

MR. DAVIS: If you are talking about the

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Court of Appeals risks, I have written a memorandum

on this and done a fair amount of research, and I have

a fair amount of confidence in that regard.

THE COURT: That is the risk I was thinking of.

MR. DAVIS: I have a memorandum on this if your Honor wants it. I am sure your Honor is more aware of the law than I am.

THE COURT: I am not aware of any problem, but of course I didn't see the news report about that recent case in Brooklyn. Perhaps I am somewhat at a disadvantage because of that. I don't know what happened there.

MR. CURLEY: Well, your Honor, a defendant from this district apparently testified before a grand jury in the Eastern District against one of the men supposed to be one of two leaders for the leadership of organized crime in New York City, and the witness declined to testify during trial, and was given immunity, as I read the newspaper article, and still refused to testify.

Accordingly, the case against the defendants on trial was dismissed, and the government indicated it would proceed with civil and criminal contempt proceedings against the witness. I think the witness was

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probably represented by counsel at that time in that juris-

THE COURT: Was a mistrial granted?

MR.CURLEY: I don't believe so, your Honor.

THE COURT: Then what's the relevance here?

MR. CURLEY: I was talking about before whether or not this witness might be held in civil or criminal contempt as opposed to eliciting his grand jury testi-

As a matter of fact I guess they are not

THE COURT: No, I shouldn't think so.

MR. CURLEY: So accordingly, if he is --

THE COURT: My concern is whether or not we mgiht be creating grounds for a mistrial by permitting a witness to be called, having a fair indication in advance that he is going to assert either lack of knowledge or lack of memory about the things he's asked about, and then using his prior grand jury testimony as the evidence in

MR. SHORTER: In that connection, your Honor, may I pass up to the Court just three pages of questions and answers given by Mr. Williams before the grand jury on February 24, 1976, and you will see, your Honor, from

mbbr those questions and answers that there is no time frame provided in the questions. The questions are extremely leading and extremely prejudicial, and this is what is going before the jury, your Honor. This is what I object to. I don't think that the government can transport into the evidence of this case those kinds of questions and answers as evidence against ary of the defendants in the case, and particularly against Mr. Jackson. This is at the heart of what I am complaining about. 12 THE COURT: I understand your point very well 13 and that is really what prompted me to ask Mr. Davis 14 whether what the government hopes to get out of this 15 testimony really justifies the risk involved and he says 16 he thinks the risk is non-existent or negligibly small. 17 MR. SHORTER: First off, if you start at 18 "Do you know a person named Earl? 19 Now no identification of who this person 20 Earl is. "Would it be fair to say that you have seen him in 21 Washington? Yes, sir. 22

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"And at one time did he tell you he was a cousin of some kind of Joe King?

"Now did there come a time when this person Earl told you he would like to introduce his source to you so

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Yes."

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that you could purchase heroin from this source?"

It says "Yes, sir."

Now when is thissupposed to be, what year, what moth? Is it relative to this conspiracy, your Honor?

Is it the same Earl that we are speaking about in this case? Then, "Did you agree to do so?"

And "Prior to your ever meeting this source did Earl come back to you and tell you he had talked to a person named Moxie?"

Now this is Earl saying something to

And the answer is "Yes, sir."

Sampson Williams, and that Moxie had said that he wished to keep this source -- this is double hearsay to begin with, your Honor -- wished to keep this source for himself, and that he did not want Mr. Williams to deal with this source. Now Mr. Sampson Williams sitting on the witness stand is going to be a conduit by which this kind of questions and answers are going to be implanted into the evidence of this case and it just offends me, your Honor, that the government can engage in this kind of a practice. He isn't charged as a co-conspirator. Mr. Williams is not an alleged co-conspirator, your Honor. The questions are very broad, very general, no time reference. We don't know what Earl he is talking about. We don't know what Moxie

he is talking about. Yes, incidentally he knows -- might know the defendant Marx Jackson on trial but are we going to clear up that th-t is who he is speaking about there? Is it going to clear up? He said he doesn't know Earl Rivers.

MR. DAVIS: Let me speak to the last point, your Honor.

Prior to going into the grand jury last February,
Mr. Williams picked out of this same photo spread the
photograph of Moxie and said tha'ts Moxie.

THE COURT: Yes, I got that from the testimony.

MR.DAVIS: In the grand jury he talked about Anderson, not Moxie. But the point is that both under the federal rules of evidence and under prior decisions of this court, out-of-court identifications are admissible, so that we can demonstrate that this is the same Moxie.

Now, in terms of the probative value of the grand jury testimony, it doesn't take two seconds to see that Mr. Williams totally corrobated what Earl Rivers testified in in court, and to say that somehow it shouldn't go in. I think it's self-serving in the extreme, and that it's clear that it should not go in.

THE COURT: I think that there may be some of

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these questions that asked for hearsay.

MR. DAVIS: They were co-conspirator statements. In other words, Earl Rivers is clearly a co-conspirator. Moxie is clearly a co-conspirator, and Joe King were clearly co-conspirators. Any statements they made are clearly inadmissible.

MR.SHORTER: Not if my client wasn't a party
of the conspiracy at the time the statements were made.
You know it just doesn't reach backward. It reaches forward.

THE COURT: No, that is not right.

MR.SHORTER: That is right, your Honor, and I have cases.

THE COURT: No, a conspirator doesn't have to make the statement to another conspirator in order for it to be an exception to the hearsay rule.

MR. SHORTER: That isn't what I am syaing, your Honor.

If at the time that these statements, whatever they may be, were made, first off, were they made by a conspirator and were they made in furtherance of the conspiracy? And before they would be admissible as evidence against any of the defendants, the defendants must have been a member of the conspiracy at the time the statement was made.

MR.DAVIS: Can I speak to that?

I really believe Mr. Shorter in all good faith in defense of his client is being a little bit disingenuous. Mr. Rivers testified that he went down and talked to Williams, and then Mox came up to him and said "Look, I want to do all of this myself."

Now here we have Mr. Williams saying that

Earl offered him an introduction to his source in heroin

and then came back and said he had talked with Moxie,

and then Moxie wanted to deal with the source himself and

he did not want Mr. Williams to deal with it.

Now clearly we are talking about -- the jury can only find we are talking about the same event.

MR. SHORTER: Of course that is convenient for you to say that, but I would submit, your Honor, that there is no time frame here.

We don't know whether they are talking about the same people. We don't know whether they are talking about the same event, and I am not responsible, your Honor, because the government tends to ask loose, rambling, general, broad questions before the grand jury, and I think that that's the purpose for which they do it.

I don't think that my client should suffer, your Honor, because of the fashion in which the government is permitted

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to run the grand jury. After all, we are in a trial, we are not before the grand jury, and that's the kind of evidence that the government is trying to introduce in this trial. You know, otherwise, your Honor, they could have prepared the entire case in the grand jury and just bring witnesses in here who say "Well, I am not going to testify," and what we will get is just a shifting of all the grand jury testimony into the evidence of this case.

THE COURT: First, they couldn't get that unless the witnesses had actually said before the grand jury under oath what the government needed to prove its case.

MR. SHORTER: But what about this, your Honor?
What about Mr. Jackson's Sixth Amendment right to confrontation. That is very basic. How does Mr. Jackson defendant himself against this? How can he cross examine that, your Honor? What happens to his right? That's what we are talking about.

Of course the government finds it convenient to do it this way. They don't expose the case to cross examination.

THE COURT: You have a right to cross examine.

You can ask Mr. Williams to explain these prior incon-

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sistent statements. .

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MR. SHORTER: Mr. Williams is going to say -first off, as I understand it, he is going to ask Mr. Williams a series of questions. Mr. Williams is going to say "I don't know anything about that, no, I am notgiving any testimony," and then he is going to stand before thejury and say "Well, didn't you say on such and such a date so and so and so, " meaning the testimony before the grand jury.

And Mr. Williams may say yes, he may say no. But then that goes in as direct evidence. How does my client, your Honor, defend himself against the introduction of that evidence?

THE COURT: How otherwise can the gov rnment protect itself if it doesn't call this man to testify now and ask him about these matters, simply because he now says he is not going to testify about them, how can it prosecute anyone for perjury? Is it not going to ignore the fact that the witness is now refusing to talk about things that he agreed to talk about before? Hasn't it got to call him as a witness and give him a chance to refuse to testify about these things?

MR. SHORTER: I agree, your Honor. What the government's problem is with Mr. Williams shouldn't clut-

ter up my defendant's rights in this case. He shouldn't be exposed to this, your Honor. That is the point that I am trying to make.

THE COURT: And you have been making it quite well and it's a troublesome point. What do you say about the right of confrontation?

MR. DAVIS: Your Honor, my understanding is that Mr. Shorter will have ever possible right on confrontation. He can ask Mr. Williams, "Was that the truth what you said in the grand jury?"

THE COURT: But the right of confirmation at the time -- the only testimony is given. That is before the grand jury --

MR. DAVIS: Well, as your Honor knows, defense lawyers are never allowed in the grand jury.

THE COURT: I know that but we have a situation here where the only time defense lawyers are present, the witness is refusing to say anything.

MR. DAVIS: That is not true.

THE COURT: And you are relying upon prior statements which were made when they didn't have confrontation.

MR. DAVIS: I might agree with that, your Honor if Mr. Williams came out and said I refuse to say

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anything. But he has not said that and it is even indicated that he will.

His simple point as I remember his testimony is that he doesn't remember certain things and that he was briefed by me or whatever, but as long as he is available for cross examination on the truth or accuracy of what he said before in the grand jury, the Advisory Committee's notes to the Federal Rules of Evidence and the DeSisto case and other cases that I can send up in my memorandum are all crystal clear that the grand jury testimony --

THE COURT: All right, let me see your memorandum.

MR. DAVIS: All right, and I will distribute the copies to counsel.

MR. SHORTER: Your Honor, the fact that the government has a memorandum on the subject right at its fingertips tells me a lot about what's been going on in this case.

THE COURT: Well, it's obvious that the government anticipated that Mr. Williams might either refuse to testify or testify differently; in fact they say so.

MR. DAVIS: Let me say one thing, that when I did talk to Mr. Williams two weeks ago he did mention that

he had been in frequent contact recently with the

defendant Marx Jackson. Now I don't know what's been

going on outside the courtroom but I think I had a fair

basis for belief that Mr. Williams might try to recede from

what he previously testified to.

(Pause.)

THE COURT: All right, you have all had a chance to see the government's memorandum. Do you want to comment onit briefly, any of you? Youdon't need to repeat the arguments that have already been made because I have given them careful consideration.

MR. CURLEY: I have no comment on that.

I just want to mention I referred to the Eastern District case in terms of possible punishment for the witness.

I do not know whether that witness testified in the grand jury and to that extent is extraneous to the argument before the Court.

THE COURT: Well, it would be irrelevant even before I knew that additional difference.

All right, bring the witness out, please.

(In open court; jury present.)

THE COURT: I apologize for the delay.

We had some very important legal matters we had to

thresh out in the absence of the jury and they took quite

1	
1	numbr Williams-direct 985
2	a while. Will you swear the witness again, please?
3	SAMPSON WILLIAMS, called as a witness
4	by the government, having been first duly sworn,
5	testified as follows:
6	MR. DAVIS: May I proceed, your Honor?
7	THE COURT: Please.
8	MR. DAVIS: Thank you.
9	DIRECT EXAMINATION
10	BY MR. DAVIS:
11	Q Now, Mr. Williams, what city do you consider
12	your home town?
13	A Washington, D.C.
14	O And you have lived there most of your adult
15	life, is that fair to say?
16	A That is right.
17	Q Do you know a person named Moxie?
18	A Yes, sir.
19	Ω How long have you know him?
20	A I don't know. Maybe 15 years.
21	O And would it be fair to say you know him
22	quite well?
23	A I would say so, yes.

way, do you know his full name?

24

25

Is the person you know as Moxie -- by the

1	mmbr	Williams-direct 986
2	A	No, sir, I don't.
3	Q	Is he in the courtroom today?
4		Will you please look around?
5	A	Yes, sir.
6	Q ·	Would you please point him out to the court
7	and jury?	
8	A	That's him.
9	Q	Is he in the front row or back row?
10	A	Right behind.
11		MR. DAVIS: May the record reflect the identifi-
12	cation of	defendant Jackson, your Honor?
13		THE COURT: You may.
14	O,	Do you know a person named Earl?
15	A	Yes, I know a person named Earl.
16	Q	Did you meet him in Washington, D.C.?
17	A	Yes, sir.
18	Q	Did Earl ever offer to introduce you to a
19	source for	heroin?
20	A .	Not that I recall.
21	Q	In particular, did he ever offer to introduce
22	you to a so	ource of heroin so that you could buy heroin
23	from this	source?
24	A	Not that I recall.
25	Q	Do you remember testifying in the grand jury

1	mmbr	Williams-direct 987
2	in this proces	eding?
3	A Yo	es, sir.
4	Q I	s it not a fact that you were asked this
5	question and	gave this answer
6	м	R.SHORTER: Objection, your Honor.
7	, T	HE COURT: Overruled.
8	QI	am referring to Page 9. "Did there come a time
9	when this per	son Earl told you that he would like to
10	introduce his	source to you so that you could purchase
11	heroin from t	his source?
12	"A Y	es, sir.
13	"O A	and did you agree to do so?
14	"A Y	'es, sir."
15		bo you remember being asked that question and
16	giving that a	inswer?
17	A 1	No, sir, I don't.
18	0 1	At the time that you do you remember when
19	it was that	you saw this person Earl?
20	A 1	No, I don't.
21	Q	Do you remember how many years ago it was?
22	Α	Three, four years. I don't know exactly
23	when.	
24	Ω Ω	You are presently incarcerated, is that not true,
25	Mr. Williams	?

- 1		
1	mmbr	Williams-direct 988
2	A	Yes.
3	Q	When did you go into prison?
4	A	July of '75.
5	Ω	Would it be fair to say that you met this
6	person earl	y in Washington, D.C. prior to going into
7	prioson?	
8	A	Yes, sir.
9	0	Did this Earl, this person Earl ever mention
10	Mr. Moxie's	name to you?
11	A	Not that I can recall.
12	Q	Did he ever tell you that he had spoken with
13	Moxie about	this heroin source?
14		MR.SHORTER: Objection, your Honor. It's
15	a leading o	question.
16		THE COURT: Try it the other way. Try it in
17	a non-lead:	ing form.
18		MR. DAVIS: Well, our Honor, he has already
19	stated tha	the does not remember any conversation. I will
20	go right in	nto it
21	Q	Do you remember testifying in the grand jury
22	and being	asked these questions and giving this answer,
23	Mr. Willia	ms:
24	1	"And prior to your ever meeting this source,
25	did Earl c	ome back to you and tell you that he had talked

1	mmbr	Williams-direct 989
2	with a pers	on named Moxie?
3	. "A	Yes, sir."
4		MR.SHORTER: Objection, your Honor.
5		THE COURT: Overruled.
6	Q	Next question "And that Moxie said he wished to
7	keep this s	ource for himself and that he did not want you,
8	Mr. William	s, to deal with this source?
9	"A	Yes, sir."
10		Do you remember being asked those questions
11	and giving	that answer?
12	A	No, sir, I don't.
13	Ω	Do you remember appearing in the grand jury in
14	this matter	?
15	A	Yes, sir.
16	Q	And did you appear before the grand jury, is that
17	right?	
18	A	Yes, sir.
19	Q	And you testified under oath?
20	A	Yes, sir.
21	Q	Do you know a person named Joe King?
22	Α	Yes, sir.
23	Q	And he lives in Washington, D.C., is that
24	right?	
25	A	I guess so.
	Harris Co.	

1	mmbr	Williams-direct 990
2	Q	Have you seen him in Washington, D.C.?
3	A	That is the only place I have ever seen him.
4	Q	That is the only place you have seen him?
5	A	Yes, sir.
6	Q	Did he ever tell you did he ever talk
7	to you abou	t narcotics?
8	A	Not that I recall.
9	Ω.	You never remember discussing narcotics with
10	Joe King?	
11	A	No, sir, I don't.
12	Ω	Let me ask you if you remember being asked
13	these quest	ions and giving these answers in the grand
14	jury.	
15		MR. SHORTER: This is a question that I ob-
16	ject to, y	our Honor, because the question is unintelligible
17	your Honor.	
18		THE COURT: Just a minute. Let me look.
19	Just one se	cond.
20	* .	(Pause.)
21		THE COURT: I want to see counsel at the
22	side bar.	
23		(At the side bar.)
24		THE COURT: This statement by King would
25	be admissib	le only if it was made in furtherance of a

-64-

11-18-76	1	mmds 1 Williams - direct 992
) n douas	2	(In open court)
Anderso	3	DIRECT EXAMINATION CONTINUED
_	4	BY MR. DAVIS:
• tk4	5	Q Now, Mr. Williams, I am putting before you
. pm	6	what has been marked Government's Exhibit 1 in Evidence
	7	in this proceeding. Will you look at that, please?
	8	A Yes.
	9	Q Have you ever seen that person before?
	10	A Not that I know of.
	11	Q Have you ever seen that photograph before?
	12	A Yes, sir.
	13	Q Where did you see that photograph before?
	14	A In your office or at the grand jury.
	15	Q You say in my office, was that photograph one
	16	of perhaps a dozen photographs that I showed you at one time
	17	A I don't know.
	18	Q Pardon me?
	19	A I don't know.
	20	Q Did you identify at any time that photograph
	21	as the person you had seen before?
	22	A Not that I recall.
J	23	
	24	Q Let me ask you if you remember being asked
	25	this question and giving this answer, and this is in the
	20	grand jury:

"Q Now, has there ever been occasion when you saw this person, Moxie, in Washington, D.C., with another individual?

"A Yes, sir."

Then I said to the grand jury reporter, "Can I have this marked Grand Jury Exhibit 2, please.

"Q Mr. Williams, I am putting before you a photo-graph that has been marked Grand Jury Exhibit 2. Is that a photograph, to the best of your ability to determine, of the person that you saw with Moxie?

"A I think so.

"Q Would it be fair to say that at another day prior to this when you were in my office that you picked that photograph out of a number of others, perhaps as many as a dozen as the person you believe you saw with Moxie on that occasion?

"A Yes, sir."

Do you remember being asked those questions and giving those answers?

A I remember being asked some questions about this particular photograph, but I don't remember ever picking this photograph out of any group of photographs.

Q Looking at the back of Government's Exhibit 1, do you see where it says Exhibit No.2, United States Grand

1	mmds	3	Williams - direct/cross 994
2	Jury?		
3		A	Yes.
4			MR. DAVIS: I have no further questions of
5	this w	itness	
6			MR. CURLEY: I have no questions.
7			MS. FRIEDMAN: No questions.
8			MR. LANDAU: No questions.
9	CROSS-EXAMINATION		
10	BY MR.	SHORT	ER:
11		Q	Mr. Williams, I believe you testified you are
12	presen	tly in	custody? Is that correct?
13		A	Yes, I am.
14		Q	You have been in custody for better than ayear?
15	Is that correct?		
16		A	Yes, sir.
17		Q	Now, there came a time that you were before
18	the grand jury?		
19		A	Yes, sir.
20		Q	Is it correct that that was around some time
21	in February of 1976?		
22		A	Yes, sir.
23		Q	Were you asked some questions about a person
24	named	Earl?	Is that correct?
25		A	Yes, sir.

1	mmds	4	Williams - cross	995
2		Q .	Who is this person named Earl, if you can	
3	tell us	s?		•
4		A	All I know is a fellow by the name of Ear	1.
5			THE COURT: I have you copy, three pages	of
6	testim	ony, i	that is what you are looking for.	
7			MR. SHORTER: I have some additional ones	
8	your H	onor.		
9		Q	What was your acquaintance, if any, with	this
10	man na	med Ea	r1?	
11		A	None, really, just we was in the same han	gouts
12	where	the pe	ople socialized together.	
13		Q	Did you have many discussions or a few di	.scus-
14	sions	with t	his person named Earl, sir?	
15		Α	I can't recall any discussions with him.	
16		Q	Sir, have you ever had a conversation wit	h Earl
17	about	money?		
18		A	No, sir.	
19		Q	Mr. Davis has asked you, sir, about certa	ain
20	questi	ons th	at were put to you in the grand jury and o	certain
21	answer	s that	were made by you. He asked you whether	or not
22	this	questic	n had been asked of you in the grand jury	•
23		"Did	there come a time when this person, Earl,	told
24	you th	nat he	would like to introduce his source to you	so
25	that y	you cou	ald purchase heroin from this source?"	

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Now, Mr. Davis asked you whether or not that question was asked of you. Do you recall the question being asked?

A No, sir, I don't.

your answer was, "Yes, sir."

THE COURT: He answered that he didn't recall.

Q Did you, sir, make the answer, "Yes, sir"?

And as reflected here in the grand jury minutes,

A Not that I recall.

Q Well, now, the grand jury minutes show, at least as far as I can read, that that question was asked you and that you did make that answer. Now I would like to call upon you, Mr. Williams, to explain to the ladies and gentlemen of the jury what your understanding of the question was and why we have minutes here from the grand jury that reflect that your answer to the question was, "Yes, sir"? Are you able to do that for us?

A No, I can't. I don't think my hearing was as good in the grand jury as it is here. I understand you perfectly here, but I don't think that I was understanding what was being said in the grand jury.

Mell, let us accept for the sake of the statement, sir, that you were, in fact, in the grand jury and that Mr. Davis was asking you some questions, that these are the questions he was asking and these are the answers 2 th

that you gave, can you tell us, Mr. Filliams, what was the meaning of your answer and what was your understanding of what was going on?

A You are asking me to go back 8, 9 months?

Man, I can't remember exactly.

Q Well, Mr. Davis has confronted you with these questions and the way the matter stands, they have been presented to the jury, and I am asking you, sir, in my efforts to cross-examine you to accept the truth of what.

Mr. Davis has said as contained in these grand jury minutes, and I am calling upon you, sir, to tell me just what your answer, "Yes, sir", meant to the question whether or not there came a time that Earl told you he would 1 kes to introduce his source to you so you could purchase heroin from his source, just what you meant and what you understood the question to be.

A Evidently I didn't understand the question at the time.

Well, did this person, Earl, tell you that he would like to introduce his source to you so you could purchase some heroin?

A Not that I recall at no time.

Q Well, what you are denying, you are denying that you said that b fore the grand jury?

	1	mmds Williams - cross 998
	2	A I don't understand what you are saying.
	3	Q Well, this transcript says in response to that
	4	question you said, "Yes, sir." My question to you is
	5	whether or not that was a truthful answer?
	6	A No, it couldn't have been a truthful answer.
	7	To my knowledge, I can't remember even talking to me about
	8	narcotics.
В2	9	Q Why would you, in the grand jury, sir, insofar
	10	as this transcript indicates, say, "Yes, sir," to the
	11	question? I want you to give me an explanation of the
	12	difference between your present position and what I conceive
	13	to be your situation or position before the grand jury.
	14	A Evidently, I didn't understand the question at
	15	the time.
	16	Q Let me ask you this, sir: Since the time you
	17	were in the grand jury have you had an opportunity to read
	18	the transcript?
·	19	A Have I had a chance to read it? No.
	20	Q Have you talked to Mr. Davis about the testimony
	21	that you gave before the grand jury, sir, since the time
	22	that you were before the grand jury?
	23	A He tried to talk to me about it.

What do you mean by that, sir?

Well, I didn't want to hear.

Q Well, Mr. Williams, what we are trying to determine in these proceedings is whether or not what is reflected here as being given by you to the grand jury is, in fact, a representation of your relationship with Earl inaccurate insofar as what any conversation that you might have had with Earl about heroin.

A I didn't have any relationship with Earl and I don't recall ever having any narcotics conversation with Earl.

Q The next question that you were asked about,

"And did you agree to do so?" That is, agree to be introduced to this source of Earl's, and your answer to that
as shown by the grand jury minutes are that you said, "Yes."

Was there such a conversation between you and Mr. Rivers?

A Not that I recall.

Q Or this person named Earl? Incidentally, do you know the last name of the person?

A No, sir.

Q How many people do you know named Earl, sir?

A I don't know. Four or five, offhand.

Q Well, when Mr. Davis was asking these questions about whether or not you know a person named Earl, do you have in mind who it is that he might be talking about, sir?

1	mmds Williams - cross 1000
2	A Yes, sir.
3	Q Were you shown a picture of this person, Earl,
4	about whom these questions were about?
5	A Not that I recall.
6	MR. SHORTER: Could I ask the government to
7	make available to me the array of photographs?
8	MR. DAVIS: Surely.
9	Q Now, Mr. Williams, Mr. Davis asked you about
10	another question that appears in the grand jury transcript,
11	and the question:
12	"And prior to your ever meeting this source, did
13	Earl come back to you and tell you that he had talked with
14	a person named Moxie?"
15	And according to the transcript, the answer to that
16	question was, "Yes, sir."
17	Now, I want to ask you, sir, as to whether or not
18	you recall giving that testimony before the grand jury?
19	A I don't understand you.
20	Q This is a question that appears in the grand
21	jury transcript and the answer that apparently was made by
22	you in the grand jury, and the question is, "And prior to
23	your ever meeting this source"
24	A Meeting which source?

Q

I imagine it relates back to the earlier

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question -- "did Earl come back to you and tell you that he had talked with a person named Moxie?"

And the answer is, "Yes, sir."

Now, I want to ask you whether or not you recall giving that testimony before the grand jury?

A No, sir, I don't.

Q I want you, sir, to assume for the sake of the question that that question was asked you and that your answer to the question was as reflected in the transcript.

Now, sir, could you give me an explanation as to what you were referring to and the meaning of this affirmative answer that is shown in the transcript? Do you understand that question?

A No, sir, I don't.

Q I am asking you, sir, to assume that you gave --

A -- A "Yes" answer?

Q -- a "Yes" answer to the question, can you, sir, explain to the ladies and gentlemen just what that answer meant or what it was that you were referring to?

A I don't have the slightest idea.

Q Well, had you, sir, ever in your lifetime talked to this person that you know as Earl about a person that you know as Moxie?

A Not that I recall, never.

Q	Mr. Williams, is	there or was	there some reason
why you went	before the grand	jury and gave	e answers to
questions tha	at are shown in the	nis transcript	:?

A No, sir, I can't answer that. You are asking me why I went before the grand jury?

Q You have been asked by Mr. Davis about certain questions that were asked of you before the grand jury?

Right? Do you recall him questioning you just a few minutes ago?

A Yes.

Q You recall, sir, that the questions that he asked you all had affirmative answers? You were just sort of saying, "Yes, sir," "Yes, sir," "Yes, sir," pretty much, not in parrot fashion, but these questions elicited from you "Yes," according to the transcript?

A Evidently so.

Q Now, I want to know, sir, were you listening to the questions or what it was that you were actually doing insofar as these questions are concerned and what you meant to convey by these answers that you gave?

A Well, at that time I really can't recall. I drug before the grand jury against my will, and to get out of there I guess I just said "Yes" to everything they asked, I imagine.

1	mmds	Williams - cross 1003
2	Q	You were drug there?
3		THE COURT: He means dragged there.
4		MR. SHORTER: I am sorry, "dragged"
5		THE COURT: I assume that is right.
6		THE WITNESS: That is right, your Honor.
7	Q	Did you ask to go before the grand jury?
8	A	No.
9	Q	Were you subpoenaed?
10	A	Yes.
11	Q	Where were you at the time you received the
12	subpoena?	
13	A	In Lewisburg.
14	Ω.	You were in the penitentiary?
15	A	Yes.
16	Q	Before the time that you got the subpoena had
17	any agents b	een to talk to you, sir?
18	A	No, sir, not that I recall.
19	Q	You were subpoenaed to this District?
20	A	Southern District, yes, sir.
21	Q	And then you went before the grand jury? Is
22	that correct	?
23	A	Yes, sir.
24	Q	Now, dealing with the question I just asked
25	that is in t	he transcript, "And prior to your ever meeting

B3

Q The person shown in the photograph, have you

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A To the best of my knowledge, no, I have never

ever seen him before?

seen him.

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Q Let us assume, sir, that when you were shown the photograph and somebody asked you whether or not that is a photograph of the person that you saw with Moxie and you said, "I think so," what did you mean by that answer, sir, if, in fact, you gave the answer?

7 8

A I don't recall the answer.

9

Q Mr. Williams, you are under oath here today?

10

A Yes, sir.

11

You know of your obligation to tell the truth?

12

A Yes, sir.

13

Q You know the gentleman sitting back there in the green shirt?

15

A Yes, sir.

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Q I believe you know him as Moxie? Is that correct?

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A Yes, sir.

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Q Dealing with this matter right at hand, that is, your knowledge of a person named Earl and the alleged conversations that Earl had with you about the source of drugs and his offer to introduce you to his source of drugs, and Earl apparently saying something to you about Moxie, and something again to you about Moxie, have you, sir, ever had any conversation with Mr. Jackson about this person that you

1	mmds Williams - cross 1007
2	know as Earl?
3	A No, sir. Me and Moxie have never to my know-
4	ledge had any conversation about Earl or with Earl.
5	Q Have you and Jackson had any conversation about
6	a person whose image is in that photograph?
7	A No, sir, never.
8	Q The person that you have in mind who is this
9	gentleman named Earl, did you know him, sir, in the year
10	1973?
11	A I really couldn't say. I would imagine it is
12	somewhere around in that neighborhood, yes.
13	Q Would you have occasion, sir, to discuss
14	narcotics or did you ever have occasion to discuss narcotics
15	or narcotics trafficking with this person whomyou believe
16	to be Earl?
17	A Never, not that I recall, at no time.
18	Q Mr. Williams, before you went into the grand
19	jury did you have a conversation with Mr. Davis about his
20	willingness to talk to the Parole Board on your behalf?
21	A Not that I recall.
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end tk4 pm

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Q Has Mr. Davis ever said to you, sir, that if you cooperated with the government, he would do something for you? And I am asking you to have in mind this period just before you went into the grand jury.

A I don't think so.

Q Now, you have pretty much, sir, denied the truthfulness of these statements that appear in the transcript as having been your testimony before the grand jury?

A Yes, sir.

Q Could you tell us, sir, why it was that you went before the grand jury and gave the testimony that you did if you in fact did so? And I am suggesting that the minutes indicate that you did so.

A Repeat that question?

O Couldyou tell us why it is that you went before the grand jury and gave this testimony? I am asking you to assume that this is a correct reflection of what was said before the grand jury, sir.

THE COURT: Hasn't he answered that several times?

MR.SHORTER: Well, it's just perplexing, your Honor, and I guess I just have to come back to it.

THE COURT: I believe he has answered it a

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mbbr 2

Williams-cross

couple of times, in several different questions. He may answer again if he can answer briefly.

Do you understand the question?

THE WITNESS: Yes, but I can only say that I was drug -- they drug me into the grand jury and that's all, and they asked me about three questions. To the best of my recollection they asked me three questions, did I know Moxie Jackson, did I know Joe King and he showed me this photograph. Now that's the extent of the questions they asked me. I think I am almost sure it was three questions, and he showed me the photograph. That's the extent of my questioning and answers at the grand jury.

- Ω Do you recall being asked about a person named Earl?
- A I don't recall. I don't recall him asking me anything about Earl in the grand jury.
- Q Do you recall, sir, the questions to you about a conversation you might have had with Earl about his source of heroin?
 - A No, sir, I don't recall that at all.
- ? Well, are you telling us, sir, that you don't have any recollection of giving this testimony before the grand jury?

	1010
1	mbbr 3 Williams-cross
. 2	A That's the extent of it.
3	O What was your mental state or your psychological
4	state or your condition, sir, in terms of mental alertness
5	at the time you were before the grand jury?
6	A It was all jumbled at the time.
7	O Were you deranged or confused?
8	A I was confused.
9	Q Are you confused now, sir?
10	A No, I don't think so.
11	Q Well, were you in the same state then as you
12	are now, sir?
13	A No, then I was confused.
14	Q When you say you were confused, what do you mean
15	by that , sir?
16	A Well, I was just shocked. I mean I didn't
17	have no idea what I was being brought from Lewisburg for
18	to the Southern District of New York, wherein I had never
19	been to New York.
20	O Do you know anything about whether or not this
21	person that you know as Earl was distributing narcotics in
22	Washington, D.C.?
23	A Not to my knowledge.
24	Q And as far as you can recall, you never had
25	a conversation with this person named Earl about any

1	mbbr 4 Williams-cross
2	drugs?
3	A No.
4	Q Could you tell us, sir, the duration of your
5 /	present sentence? What is the term?
6 .	A Five years.
7	Q And when are you parole eligible under that
8	sentence?
9	A No.
10	Q Has Mr. Davis or any agent of the government
11	ever said that they were going to assist you in making
12	parole?
13	A Not that I recall, no.
14	MR. SHORTER: If I may, your Honor, could I
15	suggest that we take the afternoon recess at this point
16	and after that I will perhaps have not more than five more
17	minutes of cross examination.
18	THE COURT: All right.
19	We will take our afternoon recess now.
20	(Recess.)
21	(In open court; jury present.)
22	BY MR. SHORTER (Continued):
23	Q Mr. Williams, in Washington, D.C. are you
24	familiar with a place called Harrison's or Harrington's?
25	A Yes, sir.

1	mbbr 5 Williams-cross	12
2	Q What is the name of the place that you are	
3	familiar with?	
4	A Harrington's.	
5	Q And where is Harr gton's located?	
6	A The 1900 block of Ninth Street Northwest.	
7	Ω What kind of place is that?	
8	A It's just a little grill, bar and grill.	
9	O Have you in the past had occasion to be in	ı.
10	Harrington's ?	
11	A Yes, sir.	
12	Q Would that be on a regular basis or on an	infre-
13	quent basis?	
14	A I'd say on a regular basis.	
15	Q How often would you be in this?	
16	A I'd say six nights out of a week.	
17	Q This person let me ask you this: Was	
18	there ever an occasion where you saw this person name	d Earl
19	in Harrington's and at the same time you saw a person	you
20	know as Moxie or let's say Mr. Jackson here, there at	the
21	same time in the company of someone else?	
22	A I don't ever recall seeing Moxie and Earl	at
23	the same time, not that I recall.	
24	O Have you ever, sir, had a conversation wi	th
25	Earl in Harrington's or at the door of Harrington's o	r at

1	mbbr 7 Williams-redirect
2	Could I ask that Agent Peacher be excused during
3	the redirect?
4	THE COURT: Yes, of course.
5	MR. DAVIS: Also one thing I perhaps should have
6	done earlier is I should like to formally offer into evi-
7	dence the questions and answers in the grand jury that
8	I have previously read, and just for the record I have
9	marked as identification the physical transcript which is
10	14 for identification.
11	MR.SHORTER: Of course I object, your
12	Honor.
13	THE COURT: Just the portion that you read.
14	MR. DAVIS: I am offering into evidence just
15	the portion I read. I am making the transcript for
16	identification.
17	THE COURT: I assume that the defendants will
18	make the objections previously advised.
19	MR .SHORTER: Yes, sir.
20	THE COURT: And I will overrule those
21	objections.
2 2	REDIRECT EXAMINATION
23	BY MR. DAVIS:
24	9 Mr. williams, you testified on cross examination
25	that you denied the truthfulness, if I remember the

- 11	1013
1	mbbr 8 Williams-redirect
2	phrase, of the statements that were read to you from your
3	grand jury testimony; is that right?
4	A Ask that question again.
5	Q Let me rephrase the question if I could to make
6	sure that you understand. When I examined you before,
7	I read to you certain questions and answers. Is it your
8	present testimony that you say that those statements in the
9	grand jury were untrue?
10	A What I said is that I don't recall most of the
11	statements in the grand jury.
12	Q My question is that do you deny the truth of
13	those statements, the question, one question that
14	I read to you was did Earl come back to you and tell you
15	that he had talked with a person named Moxie?
16	"A Yes.
17	"Q And that Moxie had said that he wished to keep
18	this source for himself and that he did not want you,
19	Mr. Williams, to deal with this source?
20	"A Yes, sir."
21	I am not talking about whether or not you
22	remember making those statements but are they true or
23	false as far as you are concerned now?
24	A I don't recall ever having any with Earl about

any narcotics.

	1016
1	mbbr 9 Williams-redirect
2	Q So it wouldbe fair to say then you deny the
3	truthfulness?
4	A That is right.
5	Q Of what you said before. Now would it be fair
6	to say that since February of 1976 and the present, you
7	have been in conversation with Moxie on the telephone?
8	A Yes, I have talked to Moxie.
9	Q On several occasions?
10	A That is right.
11	Q And is it not also true thatyou were aware
12	through conversations with him of the upcoming trial?
13	MR.SHORTER: Now I object to this, your Honor.
14	First off, it's leading and it's not proper redirect
15	evidence.
16	THE COURT: I think it's proper redirect
17	but I will sustain the objection to the leading.
18	Q Were you aware of this coming trial before you
19	talked to me a couple of weeks ago?
20	A No, sir, I wasn't.
21	Q Did you tell me when we met in my room that
22	you were aware of it?
23	MR.SHORTER: Objection, your Honor.
24	THE COURT: Overruled.
25	A Did I tell you?

1	mbbr 10 Williams-redirect
2	Q Right. Do you remember meeting with me
3	about two weeks ago very briefly?
4	A Yes.
5	Q In fact you said on cross examination that
6	I tried to talk to you but you didn't want anything
7	to do with it?
8	A Yes.
9	MR. CURLEY: I would also object, your
10	Honor, to conversations between it and the prosecutor
11	in the case on trial.
12	THE COURT: Overruled.
13	Q And there was an agent present at that time,
14	was there not?
15	A Yes- sir.
16	Q And did you tell the agent and myself that you
17	had been in conversation with Moxie the night before, and
18	that you knew about this trial coming up?
19	A I don't recall that. I remember you asking
20	me do I remember I mean did I know of this trial coming
21	up; and I said yes.
22	O How did you know of the trial coming up?
23	A No, I said no. You asked me did I know of the
24	trial coming up and I said no.
25	Q You said no?

1	mbbr 11	Williams-redirect
2	A	Yes.
3	Q	All right.
4		Now, you mentioned on cross examination
5	that you kn	ew several people named Earl; is that right?
6	A	Yes.
7	Q	Do you remember when you talked to me a couple
8	of weeks ag	o there was a period when you were waiting outside
9	in the ant	eroom?
10	A	Yes.
11	Q	And there was another person sitting there?
12	A	Yes.
13	Q	And did you not tell him did you not talk
14	to him abou	t Earl?
15	A	No, sir.
16	Q	Do you know that person's name?
17	A	No, I don't.
18	Q	Was it Bobby Moore?
19	A	Oh, yes.
20	Q	Pardon?
21 22	A	Yes, sir, I know him.
	Q	It was Bobby Moore?
23	A	Yes.
24	Q	Did you or did you not talk with Bobby Moore
25	about Earl	?

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1	mbbr 12	Willia	ns-redirect	1019
2	Q	Did you see any	thing about Earl	?
3	A	Not that I reca	11.	
4	0	You first state	d on cross exami	nation by
5	Mr. Shorter	when he asked y	ou why it was th	at these
6	statements	were in the tran	script, that it	was because
7	of your hea	ring at the time	, is that right?	
8	A	Yes, I didn't f	ully evident1	y I didn't
9	fully under	stand the statem	ents at the time	•
10	Q	My question is,	are you present	ly saying
11	that when	ou were in the	rand jury room o	n the record,
12	that you d	d't hear the que	stions that were	asked you?
13	A	I don't think s	ю.	
14	Q	You didn't hear	them. Now pri	or to going to the
15	grand jury	room, did you ta	alk with myself a	and an agent
16	in my offi	ce?		
17	A	Yes, sir.		
18	Q	And did we go	over the same th	ings?
19		MR.SHORTER:	Objection, your	Honor.
20		MR. DAVIS: I	am trying to est	ablish.
21		MR. SHORTER:	Excuse me, your	Honor,
22	I don't thi	nk these kind o	f comments ought	to be made in the
23	presence o	f the jury. I o	bject to it.	
24		THE COURT: I wi	ll see counsel a	t the side bar.
25		(At the side b	ar.)	

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Williams-redirect

THE COURT: Mr. Curley, you made the statement that a prior statement of the witness to a prosecutor
is not admissible. Do you have any authority for
that?

MR. CURLEY: No, I don't offer it on that ground, your Honor. I offer the objection on the grounds that the prosecutor is not to interject himself as a potential witness in a case in which he is assigned as a prosecutor.

THE COURT: He did establish that there was an agent present also.

MR. CURLEY: That came after my objection, your Honor.

THE COURT: Yes.

MR. CURLEY: As I understand it.

MR.DAVIS: I am not going to ask any questions about anything that didn't happen except in the presence of an agent.

MR.SHORTER: But you see, your Honor, to follow through on this objection, I don't think that Mr. Davis ought to put his integrity or his credibility or the strength of his office into these questions. I don't think he should say "Well, didn't you say to me"? It just carries such an impression, your Honor, that there is absolute truth behind what Mr. Davis is framing as a

Williams-redirect

question.

But my other objection is this, your Honor:

I'd like to know where we are headed now. Mr. Davis
has through the process that we have gone through, obtained a ruling from the court that the grand jury minutes are admissible as primary evidence. Now he is attempting to next get into evidence conversations that took place between he and the agent, which are, I would imagine, identical to what the statements are. It just seems to me, your Honor --

THE COURT: No, he is getting into something else, I think probably threats or implied threats.

MR.SHORTER: No, he isn't.

THE COURT: Isn't that what you are getting into?

MR. DAVIS: My point is, your Honor, Mr.
Williams said first that the reason he made these statements is he just didn't hear things right. Now the
fact that I want to bring out is that we carefully went
over these things beforehand to get it down right and
that was the basis of my asking questions, and then when he
says he didn't hear right he is just wrong, your Honor.

THE COURT: You are talking about times before the grand jury testimony?

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MR. DAVIS: Prior to going to the grand jury we went over this, and I asked him what he knew about it, and he told me. Then he says "Well, I didn't hear right at the grand jury." That is a fraud upon these jurors.

THE COURT: I think it probably would be better for you to ask him whether you went over these things in advance instead of putting it to him as "Didn't you tell me thus and so?"

MR. DAVIS: All right.

THE COURT: I think when you are doing that you are implying at least that he did tell you what you suggest, and that is putting your credibility on the line.

MR. DAVIS: All right.

MR.SHORTER: Not only that, your Honor, it's also giving the government an opportunity to offer in evidence, offer as primary evidence statements made before the grand jury bolstered by something that he said in private. Now what he said in private wouldn't ordinarily be admissible. The rules, and particularly the rule that counsel has referred us to, does not make admissible statements that are not under oath.

Now he is getting into evidence the statements made under oath, and now he is going to bolster them with statements that were not made under oath and this

is a clear violation of the hearsay rule, your Honor.

MR. DAVIS: I am not introducing what happened before going into the grand jury for the purpose of the truth of it. I do want to explode this fraud of him saying that the only reason he said something in the grand jury was because he misheard it. It is just lying.

MR. SHORTER: Excuse me, if we are dealing with a fraudulent situation or a lying witness, I have to have the record show that none of the defendants are responsible for this, and we are getting into a quagmire. It isn't sinking the witness, it's sinking the defendants, and I don't think we ought to get into a second trial of whether or not Mr. Williams is engaging in a fraud.

I don't see how any defendant canbenefit from that.

MR.DAVIS: It was brought out by the government.

MR.SHORTER: It was brought out by the government. I just asked the man questions that you brought in here trying to get some understanding.

THE COURT: I think, Mr. Davis, as I understand it, is willing to limit his questions to the fact that these matters were discussed with him before he went

1	mbbr	Willi	ams-redirect	1024	
2	on the stand	before the gr	and jury.		
3	M	R. DAVIS:	Your Honor, I	will go no more	
4	than that.				
5	N	s. FRIEDMAN:	Mr. Davis	has already inferred	ι
6	that witness	was threatene	ed or talked t	o and I feel that.	
7	T	HE COURT: F	de hasn't done	that so far.	
8	I thought tha	t's what he w	as getting		
9	N	S. FRIEDMAN:	He has. He	said he spoke to Mox	ie
10	and he is inf	erring there	was a threat	or a plan or somethi	ing
11	and I feel th	at this is pr	ejudicial to	my client.	
12	7	HE COURT: We	ll, I don't se	ee how it's preju-	
13	dicial to you	r client beca	ause this with	ness hasn't in	
14	any way invol	ved your clie	ent.		
15	4	S. FRIEDMAN:	No, no, but	the point is he	
16	is inferring	that witness	es are talked	to, and that wit-	
17	nesses are th	reatened, and	d I feel that	it's creating a cer-	-
18	tain climate	in which cl	ient cannot g	et a fair trial.	
19	1	R. DAVIS:	There has bee	n no testimony of	
20	threats, your	Honor.			
21		THE COURT: A	ll right. I	will instruct the jur	ry
22	to disregard	any question	s thatyou hav	e asked up to	
23	this point al	out the spec	ifics of the	conversation.	
24	1	MR. DAVIS:	Except as to	the defendant	
25	Jackson.				

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generally?

THE COURT: No, we are talking about the specifics of the conversation with you before his testimony.

MR. DAVIS: I thought we were talking about Mrs. Friedman's comment.

THE COURT: No.

MR. DAVIS: I will be allowed to ask him

THE COURT: Yes, when you had discussions in general about the subject of his testimony before he went before the grand jury.

into the grand jury?

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What do you mean go over them? Things you were

1	mmds 2 Williams - redirect 1027
2	telling me to say?
3	Q Is it your testimony that I told you to say
4	things?
5	A Yes, that is what you did, isn't it?
.6	Q You tell me, Mr. Williams, where it was I told
7	you to say this.
8	A In your office.
9	Q How did I do this?
10	MR. CURLEY: Objection. It is argumentative
11	and quite irrelevant.
12	THE COURT: I will permit it, but I don't under-
13	stand the question.
14	MR. DAVIS: Describe fact-by-fact how it is
15	he claims that I told him to give these answers.
16	Q Can you tell us, Mr. Williams?
17	A Yes, you were telling me well, say, for
18	instance, what Earl would say that what had transpired
19	between Earl and I.
20	Q And what happened?
21	MR. CURLEY: Can I request an instruction that
22	this has no relevance on the part of the conspiracy alleged
23	against my client, the conversation and the dates they are
24	talking about?
25	THE COURT: I think it is apparent all that
	-100-

1	mmds 3 Williams - redirect 1028
2	tstimony of the witness only related specifically to one
3	of the defendants.
4	Q By the way, where did this convesation take
5	place, Mr. Williams?
6	A In your office.
7	Q Who was present at that time?
8	A I don't have the slightest idea.
9	Q What happened?
10	A What do you mean what happened?
11	Q You mentioned a minute ago that I told you what
12	to say. Is that right?
13	A Well, you were relating to me what Earl had
14	said.
15	Q Is it your testimony that I told you to say
16	that to the grand jury?
17	A You didn't tell me to say anything. What you
18	said, you told me that you wanted to ask me several questions
19	at the grand jury. That is the way you phrased it, I am
20	pretty sure.
21	Q And were those questions asked of you at that
22	point in my office?
23	A Not that I recall. I don't think so.
24	Q They were not?
25	A No.

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1	mmds 4 Williams - redirect 1029
2	Q You testified earlier that you were drug or
3	dragged in to the grand jury? Is that right?
4	A Yes.
5	Q Who did this dragging?
6	A You did.
7	Q Physically?
8	A No.
9	Q Did you ever state that you did not want to
10	go before the grand jury?
11	A Yes, and you got a subpoena or immunity papers
12	about a week later you said it would take about seven
13	days and then served them on me.
14	Q You also testified on cross-examination by
15	Mr. Shorter that the reason you made certain statements was
16	you were up there and just wanted to get out. Do you
17	remember making that statement on cross-examination?
18	A Yes.
19	Q Do you remember being told in the grand jury
20	and I would like to read, if I could do you remember being
21	told this in front of the grand jury
22	MR. SHORTER: Could we have the point where
23	he is going to start and where he is going to stop, because
24	we don't want it read before we have an opportunity to say
25	something.

1	mmds 5 Williams - redirect 1030
2	MR. DAVIS: Page 4 at line 20 to page 5, line 1
3	MR. SHORTER: May we come to the bench, your
4	Honor?
5	THE COURT: All right.
6	(At the side bar)
7	THE COURT: May I see the part that you are
8	going to read?
9	MR. DAVIS: Yes.
10	THE COURT: I don't see the relevance of that.
11	MR. SHORTER: I don't, either.
12	MR. DAVIS: He is now stating that the only
13	reason he said things at the grand jury was just to get out
14	of there. I want to I think it is important for the jury
15	to see something of the tone of the proceedings in the
16	grand jury, the fact that he was very carefully warned that
17	what he was doing was testifying under oath, and he had to
18	be very clear in that everything that he said was accurate,
19	and he is trying ti give the impression that he said some-
20	thing and wanted to get out of there.
21	Here is something on the record in the grand .
22	jury that was told to him that he acknowledged hearing. It
23	is probative as to his state of mind.
24	THE COURT: This is not what I understood. I

thought you were going to show that he was testifying

of perjury.

voluntarily and not being dragged.

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MR. DAVIS: This is as to his state of mind, the fact that he was specifically reminded of the penalties

THE COURT: What do you have to say?

MR. SHORTER: We should give him the same admonition, that he is under oath and subject to the penalties of perjury.

MR. DAVIS: His state of mind at that time -THE COURT: What you are suggesting is different then? It is the same then as it is now.

MR. DAVIS: He did say that he was just trying to get out of there and that he was answering questions he couldn't hear.

MR. SHORTER: If your Honor were to give him the same admonition now, that the same admonition applies to his testimony now as it applied then.

THE COURT: You don't want me to do that. It would give the suggestion that he is not telling the truth.

MR. SHORTER: Well, your Honor, to permit the government to do that, it gives this some aura that does not exist at the present time, and I don't think it is necessary to do that.

THE COURT: I would not permit it if he had

1	mmds 7 Williams - redirect 1032
2	not said, in effect, "I was just answering the questions to
3	get out of there," and "I was answering questions I could
4	not hear."
5	MR. SHORTER: That has nothing to do with
6	whether they were truthful or not.
7	MR. DAVIS: His state of mind was raised by
8	the defense.
9	MR. SHORTER: No.
10	THE COURT: For about a half-hour you went into
11	what he was thinking about and whether he was under pessure
12	and confused and so forth.
13	MR.SHORTER: I was not trying to establish
14	anything; I was simply probing, your Honor, and just asking
15	questions.
16	THE COURT: I will permit it. Objection over-
17	ruled.
18	MR. CURLEY: While we are at the side bar,
19	basically it is the position of the defendant Joann Jones
20	that we are a third party non-beneficiary, and that what
21	took place in and around the grand jury between Mr. Davis
22	and Mr. Sampson Williams does not involve my client, since
23	my client is only involved in this case in a conspiracy
24	count. I think the prejudicial aspects of putting the
25	credibility of this witness against that of Mr. Davis is

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extremely prejudicial.

THE COURT: I don't see the prejudice at all where this witness has not implicated your client in the least.

MR. LANDAU: It is a conspiracy case, Judge.

MS. FRIEDMAN: Yes.

MR. CURLEY: If I may finish, I think the response in unison from co-counsel indicates certainly that my client, who is only in the conspiracy count, puts us in a position where there is nothing we can do to avoid this confrontation between what appears to be a witness who is not doing himself any good and the United States Attorney's office.

The United States Attorney's office has to win this battle to the prejudice of the other people in the case. We are not a part of this battle. I think it is prejudicial, and on behalf of the defendant Joann Jones I move for a severance of her case at this time.

MS. FRIEDMAN: I make the same motion.

MR. LANDAU: I join in the motion.

THE COURT: All three motions are denied.

MR. CURLEY: I follow it up with a motion for a mistrial on behalf of the defendant Joann Jones.

MS. FRIEDMAN: I join in that.

1	mmds 9 Williams - redirect 1034
2	MR. LANDAU: I do, too.
3	THE COURT: Denied.
4	MS. FRIEDMAN: This will rub off on my client,
5	and I move for a mistrial, your Honor.
6	THE COURT: Denied.
7	MR. SHORTER: You see, what happens here,
8	Mr. Williams is sort of like a Trojan horse and he brings
9	in all kinds of problems and takes a position and the
10	government wants to bring him down. I object to all of this
11	I think we are going into routes that are diversionary,
12	they are distracting, and they constitute sub-issues, and
13	I object to it.
14	MR. DAVIS: I am near the end of my redirect,
13	and I have no objection to your Honor instructing the jury
16	that what I am about to read is solely for the purpose of
17	assessing his state of mind.
18	THE COURT: I don't think that really is going
19	to change the situation.
20	
21	MR. DAVIS: This is virtually the end of my redirect.
22	
23	MR. LANDAU: If I may just point out, it is
	now 4:45 in the afternoon and we have spent all this time

THE COURT: I know. Unfortunately, I can't

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on this witness.

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tell the government how to run its case, any more than I can limit cross-examination.

MR. LANDAU: I understand.

(In open court)

BY MR. DAVIS:

Mr. Williams, I was about to ask you, do you remember being told these words in the grand jury on the record, "In addition to that, Mr. Williams, I want you to understand that the gentleman to your left is a court reporter who is stenographically reporting my questions and your answers, and that since you are now under oath, any answers you give are being given subject to the penalties of perjury, which means that if you make a material and willful false statement while under oath, you could be prosecuted for violation of the various federal laws that relate to perjury.

"Do you understand that?

Yes, sir.

And the reason for this is that the grand jury has a right, and particularly the duty, to have truthful information given to them and, therefore, it is against the law to lie to a grand jury."

Do you remember being told that, Mr. Williams?

No, sir, I don't recall that.

MR. DAVIS: I would offer that question and answer in evidence for the purposes discussed.

THE COURT: It will be received subject to the objections that were made.

Q Now, on cross-examination, Mr. Williams, the reasons you gave as to why you answered the questions --

MR. SHORTER: Excuse me. I object to the manner in which the question is phrased. I don't think the witness has conceded he so testified. So the question should not assume that he did.

MR. DAVIS: They are in evidence.

MR.SHORTER: He is confronting the witness with a proposition that the witness has not testified to.

MR. DAVIS: Let me rephrase that.

Q You were asked a number of questions by
Mr. Shorter, assuming this for the record in the case, why
you testified that way?

A Yes.

Q Your first answer was that your hearing was not too good at that time, and then later on you said that you were up there in the grand jury and you wanted to answer the questions and get out?

A Yes.

Now, can you think of any other reasons why

1	mumds 12 Williams - redirect 1037
2	you might have testified that way in the grand jury?
3	A Well, for one thing, I could not hear very
4	well at that particular time.
5	Q Have you trouble hearing me today?
6	A No, I have not.
7	Q Have you had a history of hearing problems?
8	A Yes.
9	Q You were treated?
10	A You are saying the man was on my left and the
11	grand jury
12	Q I didn't say anything. The grand jury minutes
13	A When you read that, you said that the reporter
14	was on my left.
15	Q' Right.
16	A Well, that is my bad hearing ear.
17	Q It is your testimony that the reporter was
18	saying something to you?
19	A No. I am saying what you said, that the
20	reporter was on my left in the grand jury room. You said
21	that, you just read that.
22	Q And you could not hear the reporter? Is that
23	right?
24	A Yes.
25	Q But can you think of any other reasons why you

1	mmds 13 Williams - redirect 1038
2	might have testified that way in the grand jury, other than
3	your hearing, and other than the fact that you wanted to
4	get out of there?
5	A No, I can't.
6	Q Were you ever threatened in any way by me
7	or anyone else in the office?
8	A No, sir.
9	Q You testified a minute or two ago that people
10	in the government told you what to say? Is that right?
11	A Well, told or suggested or laid it out, what-
12	ever way you want to put it.
13	Q Is it your testimony that the testimony that
14	you gave in the grand jury is solely what you were told
15	to say?
16	A No, because I didn't know what you were going
17	to ask me in the grand jury.
18	MR. DAVIS: I have no further questions.
19	THE COURT: Any recross?
20	All right, sir, thank you, you are excused.
21	(Witness excused.)
22	MR. DAVIS: Can I ask him one more question?
23	
24	

	1	mmds 14 Williams - redirect 1039
	2	SAMPSON WILLIAMS, resumed.
	3	REDIRECT EXAMINATION CONTINUED
	4	BY MR. DAVIS:
	5	Q You also testified on cross-examination that
	6	you know several people named Moxie?
В3	7	A Yes, sir.
	8	Q Now, I am putting before you what I have marked
	9	Government's Exhibit 15 for Identification. Do you see
	10	. that?
	11	A Yes.
	12	Q That is a photograph of the Moxie who is in
	13	court today?
	14	A Yes, I think so.
	15	. Q Did you select that photograph out of a collec-
	16	. tion of numerous others prior to going in the grand jury
	17	as being that of Moxie?
	18	A No, sir.
	19	MR. DAVIS: No further questions.
	20	THE COURT: All right. Thank you.
	21	(Witness excused)
	22	THE COURT: We are going to recess until
	23	10:00 o'clock Monday morning. Have a good weekend. Don't
	24	discuss the case in the meantime with anyone.
	25	(Jury excused) ·

S. D. OF N. Y.

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UNITED STATES GRAND JURY

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-V-

RAYMOND ANDERSON, ET AL

United States Courthouse Foley Square New York, New York

February 24, 1976 11:40 a.m.

APPEARANCES:

FREDERICK T. DAVIS, ESQ.,

Assistant United States Attorney

MEL WINTER, Acting Grand Jury Reporter

NATIONAL REPORTING INC.
CERTIFIED SHORTHAND REPORTERS
FIVE WORLD TRADE CENTER
NEW YORK, N. Y. 10048
[212] 466-1280

2 SAMSON

WILLIAMS,

called as a

witness, having been duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. DAVIS:

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In addition to that, Mr. Williams, I want you to understand that the gentleman to your left is a court reporter who is stenographically reporting my questions and your answers, and that since you are now under oath, any answers you give are being given subject to the penalties of perjury, which means that if you make a material and

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...14

willful false statement while under oath, you could be prosecuted for violation of the various federal laws that relate to perjury.

Do you understand that?

A Yes, sir.

Q And the reason for this is that the Grand Jury has the right, and particularly the duty, to have truthful information given to them and, therefore, it is against the law to lie to a Grand Jury.

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Q And that Moxie had said that he wished to keep this source for himself, and that he did not want you, Mr. Williams, to deal with this source?

A Yes, sir.

Q Now, has there ever been an occasion when you sum this person, Moxie, in Washington, D. C., with another individual?

A Yes, sir.

MR. DAVIS: Can I have this marked Grand Jury's Exhibit 2, please?

(So marked.)

Q Mr. Williams, I am putting before you a photograph that has been marked Grand Jury's Exhibit 2.

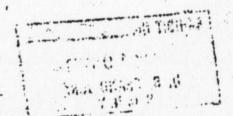
Is that a photograph, to the best of your ability to determine, of the person that you saw with Moxie?

A I think so.

Q Would it be fair to say that at another day, prior to this, when you were in my office, that you picked that photograph out of a number of others, perhaps as many as a dozen, as the person you believe you saw with Moxie on that occasion?

A Yes, sir.

11.



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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that 2 copies of the foregoing Brief and 1 copy of the separate Appendix, both for the appellant Marx R. Jackson, were served personally on Robert B. Fiske, Esq., United States Attorney, United States Courthouse Annex, One St. Andrews Plaza, New York, New York 10007 and service by mail, postage prepaid, to Mayrose Friedman, Esq., Attorney for Appellant Arletha Franklin, 501 Madison Avenue, New York, New York 10022; and Jerome Allan Landau, Esq., Attorney for Appellant Virgil White, 401 Broadway, New York, New York 10013, this 12th day of April, 1977.

JOHN A. SHORTER, JR.

